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ex rel. Bill Lockyer, Attorney General of the State of California  
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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF MARIN  
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<p>13 PEOPLE OF THE STATE OF CALIFORNIA ex rel. 14 BILL LOCKYER, ATTORNEY GENERAL OF THE 15 STATE OF CALIFORNIA, 16 Plaintiff, 17 v. 18 MARIN COUNTY BOARD OF SUPERVISORS, 19 BUILDING &amp; SAFETY DIVISION OF THE MARIN 20 COUNTY COMMUNITY DEVELOPMENT 21 AGENCY, AND DOES ONE THROUGH FIFTY, 22 Defendants,</p>	<p>Case No.: <b>PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR BREACH OF CONTRACT</b></p>
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22 The People of the State of California, by and through Bill Lockyer, Attorney General of  
23 the State of California, allege as follows:  
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25 **INTRODUCTION**

26 1. Government Code section 4450 et seq. requires that all buildings, structures,  
27 sidewalks, curbs and related facilities constructed or remodeled with public funds after January  
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1 1, 1969, be accessible to and usable by persons with disabilities and that they comply with the  
2 building standards contained in regulations adopted by the California Building Standards  
3 Commission set forth at Title 24, Part 2, Volume 1 of the California Code of Regulations (“Title  
4 24”).

5 2. Government Code section 4453 provides that where county funds are utilized, the  
6 governing body of the county has a mandatory duty to enforce Government Code section 4450 et  
7 seq. and Title 24 with respect to publicly funded buildings, structures, sidewalks, curbs and  
8 related facilities located within the county’s jurisdiction.

9 3. Government Code section 4452 provides that any unauthorized deviation from Title  
10 24 regulations shall be rectified by full compliance within 90 days after confirmation of the  
11 deviation.

12 4. Health and Safety Code section 19955 et seq. requires that all privately funded public  
13 accommodations and facilities constructed or remodeled after January 1, 1970 be accessible to  
14 and usable by persons with disabilities, and that they comply with the provisions of Government  
15 Code section 4450 et seq. and the building standards contained in Title 24.

16 5. Health and Safety Code section 19958 provides that the building department of a  
17 county has the mandatory duty to enforce Health and Safety Code section 19955 et seq. and Title  
18 24 with respect to privately-funded public accommodations and facilities within the county’s  
19 jurisdiction.

20 **THE PARTIES**

21 6. Plaintiff Bill Lockyer is the duly elected Attorney General of the State of California.  
22 The Attorney General is empowered by the California Constitution to take whatever action is  
23 necessary to see that the laws of the State are uniformly and adequately enforced. (Cal. Const.,  
24 art. V, § 13.) This authority extends to taking whatever action is necessary to ensure that local  
25 governing bodies and local building departments meet their mandatory duties to enforce  
26 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq. and the  
27 building standards that are set forth in Title 24. Government Code section 4458 and Health and

1 Safety Code section 19955 authorize the Attorney General to enforce these statutory provisions  
2 and regulations.

3 7. The Defendant Marin County Board of Supervisors is a governing body within the  
4 meaning of Government Code section 4453 and, therefore, has a mandatory duty to enforce  
5 Government Code section 4450 et seq. and Title 24 with respect to publicly funded buildings,  
6 structures, sidewalks, curbs and related facilities that are constructed or altered with county  
7 funds.

8 8. Defendant Building & Safety Division of the Marin Community Development Agency  
9 (hereafter “Defendant Building Department”) is a building department within the meaning of  
10 Health and Safety Code section 19958 and has a mandatory duty to enforce Health and Safety  
11 Code section 19958 et seq. and Title 24 with respect to privately funded public accommodations  
12 and facilities that are subject to the jurisdiction of the County of Marin.

13 9. Defendants Does One Through Fifty, inclusive, are sued under fictitious names. Their  
14 true names and capacities are unknown to Plaintiff, and therefore, Plaintiff sues them in this  
15 fictional capacity. When their true names and capacities are ascertained, Plaintiff will amend  
16 this Petition and Complaint by inserting their true names and capacities herein. Their real  
17 identities will be supplied when known.

18 **VENUE AND JURISDICTION**

19 10. This Court is the appropriate venue for this case because the contract alleged to have  
20 been breached was entered into by Defendant Marin County Board of Supervisors in Marin  
21 County and its terms were to have been carried out within the County of Marin. Moreover, this  
22 Court has jurisdiction over causes of action alleging breach of contract and causes of action  
23 alleging the failure to carry out mandatory statutory responsibilities pursuant to Government  
24 Code section 4450 et seq. and Health and Safety Code sections 19955 et seq.

25 **EXHAUSTION OF REMEDIES**

26 11. The State is exempted from having to comply with applicable claims procedures for suits  
27 brought against local public entities pursuant to Government Code section 905, subdivision (i).

1 **ALLEGATIONS**

2 **FIRST CAUSE OF ACTION**

3 (Breach of Contract)

4 12. Defendant Marin County Board of Supervisors entered into a written Settlement  
5 Agreement with the Attorney General of the State of California that is dated October 3, 1994  
6 (hereafter the 1994 Agreement). A true and correct copy of this Settlement Agreement is attached  
7 hereto as Exhibit 1 and is incorporated by reference.

8 13. Pursuant to the 1994 Agreement, Defendant Marin County Board of Supervisors agreed  
9 to do the following:

10 a) within 12 months bring the restrooms, paths of travel, drinking fountains, parking,  
11 curb ramps, entrance doors, interior doors, stairs and signage at the Veterans Auditorium into  
12 conformity with Title 24.

13 b) within 30 days, implement the written procedure for processing disabled access  
14 complaints, attached as Exhibit A to the 1994 Agreement; this procedure was to be used to process  
15 and resolve complaints lodged by members of the public alleging violations of Government Code  
16 section 4450 et seq, Health and Safety Code section 19955 et seq., and/or Title 24. This written  
17 procedure detailed the manner and time within which such complaints would be investigated and  
18 resolved. The 1994 Agreement also required that all hardship exceptions would be analyzed in  
19 writing, using the five factors set forth in section 422 subdivision (c) of Title 24 and indicating the  
20 equivalent facilitation to be provided, and that the written complaint form attached to the 1994  
21 Agreement as Exhibit B would be utilized; and

22 c) immediately provide training on state disabled access laws and regulations to  
23 current employees responsible for enforcing those laws and regulations, and provide such training  
24 in the future to any new employee who would perform such function within 30 days of his or her  
25 hire. The nature and frequency of the required training was to be determined after consultation with  
26 the then California Office of the State Architect (now the Division of the State Architect) and the  
27 California Department of Rehabilitation.



1 19. The facts alleged in paragraphs 1 through 18 above establish that Defendant Marin  
2 County Board of Supervisors has materially breached the 1994 Agreement, and is liable to Plaintiff  
3 for breach of contract for failing to comply with the terms of the 1994 Agreement. Plaintiff is  
4 entitled to specific performance of the terms of the 1994 Agreement pursuant to Civil Code section  
5 3384.

6 **SECOND CAUSE OF ACTION**

7 (Mandamus Relief–Failure to Meet Mandatory Duty to Enforce Government Code section 4450  
8 et seq., Health and Safety Code section 19955 et seq., and Title 24)

9 20. Plaintiff realleges and incorporates the allegations of paragraphs 1 through 19 as if fully  
10 set forth herein.

11 21. On or about November 1, 2001, a private citizen lodged a complaint with Plaintiff  
12 alleging that, on April 25, 2001, he lodged a complaint with Defendants alleging that the parking  
13 facilities and a path of travel at Walgreens, located at 227 Shoreline in Mill Valley, did not comply  
14 with Title 24. He further alleged that the Defendants failed to investigate and resolve his complaint.  
15 This Walgreens is subject to the jurisdiction of Defendant Building Department and is a privately  
16 funded public accommodation or facility within the meaning of Health and Safety Code section  
17 19955 et seq. Plaintiff conducted an investigation of the private citizen’s complaint and determined  
18 that the Defendants failed to investigate and resolve the complaint and that, as of June 4, 2002, the  
19 path of travel and the parking at the subject Walgreens did not comply with Title 24.

20 22. On or about November 1, 2001, a private citizen lodged a complaint with Plaintiff  
21 alleging that, on September 3, 2001, he lodged a complaint with Defendants alleging that the ramp,  
22 the entrance and the parking at Video Droid, located at 215 Shoreline in Mill Valley, did not comply  
23 with Title 24. He further alleged that the Defendants failed to investigate and resolve his complaint.  
24 Video Droid is subject to the jurisdiction of Defendant Building Department and is a privately  
25 funded public accommodation or facility within the meaning of Health and Safety Code section  
26 19955 et seq. Plaintiff conducted an investigation and determined that Defendants failed to  
27 investigate the complaint and that, as of June 4, 2002, the parking, entry ramp, store entrance and

1 pedestrian route across the parking lot did not conform to Title 24.

2           23. On or about November 1, 2001, a private citizen lodged a complaint with Plaintiff  
3 alleging that, on or about September 3, 2001, he lodged a complaint with Defendants alleging that  
4 the ticket booth, parking, parking ticket machines, stairways, pathways, picnic areas, a fishing pier,  
5 beach access, restrooms, drinking fountains, telephones, vending machines and signage at Paradise  
6 Beach Park, located at 3450 Paradise Drive, did not comply with Title 24. He further alleged that  
7 defendants failed to investigate and resolve his complaint. Paradise Beach Park is facility that was  
8 constructed and altered with the use of county funds. Plaintiff conducted an investigation and  
9 determined that Defendants failed to investigate the complaint and that, as of July 10, 2002, the ticket  
10 booth, parking, parking ticket machines, stairways, pathways, picnic areas, a fishing pier, beach  
11 access, restrooms, drinking fountains, telephones, vending machines and signage at Paradise Beach  
12 Park did not conform with Title 24.

13           24. On or about February 5, 2002, a private citizen lodged a complaint with Plaintiff alleging  
14 that, on or about January 16, 2002, he lodged a complaint with Defendants alleging that the parking,  
15 exposed panic hardware, toilet rooms and signage at an Outback Steak House in Sausalito did not  
16 comply with Title 24. He further alleged that Defendants failed to investigate and resolve his  
17 complaint. This Outback Steak House is subject to the jurisdiction of Defendant Building  
18 Department and is a privately funded public accommodation or facility within the meaning of Health  
19 and Safety Code section 19955 et seq. Plaintiff conducted an investigation and determined that  
20 Defendants failed to investigate the complaint, and that, as of July 10, 2002, the parking, exposed  
21 panic hardware, toilet rooms and signage at the Outback Steak House did not conform to Title 24.

22           25. On or about November 1, 2001, a private citizen lodged a complaint with Plaintiff  
23 alleging that, on or about April 25, 2001, he lodged a complaint with Defendants alleging that the  
24 sidewalks, curbs, curb ramps, crosswalks and signage on Judge Haley Drive in San Rafael did not  
25 comply with Title 24. He further alleged that Defendants failed to investigate and resolve his  
26 complaint. These sidewalks, curbs, curb ramps, crosswalks and signage were constructed or altered  
27 with county funds. Plaintiff conducted an investigation and determined that Defendants failed to

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1 investigate the complaint and that, as of September 25, 2002, the sidewalks, curbs, curb ramps,  
2 crosswalks and signage on Judge Haley Drive in San Rafael did not conform to Title 24.

3 26. The allegations contained in Paragraphs 1 through 25 above establish that Defendants  
4 have failed to carry out their mandatory duty to enforce Government Code section 4450 et seq.,  
5 Health and Safety Code section 19955 et seq. and the implementing regulations contained in Title  
6 24. Plaintiff is informed and believes, and based upon such information and belief alleges that  
7 Defendants' failure to meet such mandatory duty is due to defective or inadequate policies, practices,  
8 and procedures for preventing and correcting violations of Government Code section 4450 et seq.,  
9 Health and Safety Code section 19955 et seq. and Title 24, and the failure to provide adequate  
10 disabled access training to their employees who are responsible for disabled access enforcement.  
11 Complaints received by Defendants that allege deviations from Government Code section 4450 et  
12 seq., Health and Safety Code section 19955 et seq. and Title 24 are not investigated and are not  
13 rectified within 90 days of the confirmation of a deviation, and building permits are being issued by  
14 Defendants for new construction and/or alteration projects which do not conform with Health and  
15 Safety Code section 19955 et seq. and Title 24. Publicly-funded facilities are being constructed and  
16 remodeled that do not comply with Government Code section 4450 et seq. and Title 24. This failure  
17 to enforce Government Code section 4450 et seq., Health and Safety Code section 19955 et seq., and  
18 Title 24 and to do so in a timely manner has resulted in, and poses an unreasonable risk of, future  
19 violations of those laws and regulations.

20 27. Plaintiff is entitled to a writ of mandate ordering Defendants to carry out their mandatory  
21 duty to enforce to Government Code section 4450 et seq. and Health and Safety Code section 19955  
22 et seq.

23 28. Plaintiff is entitled to all costs incurred by him in the investigation that preceded the  
24 filing of this action and in prosecution of this action pursuant to Code of Civil Procedure section  
25 1021.8.

26 **NECESSITY FOR EQUITABLE RELIEF**

27 29. In view of the foregoing, and by the nature of the allegations, except as specifically pled

1 above, there exists no adequate remedy at law. Further, the various violations of law alleged result  
2 in irreparable harm to the People of the State of California, and the balance of hardships weighs in  
3 favor of the People.

4 **PRAYER**

5 Wherefore, the Attorney General requests the following relief:

- 6 1. For temporary, preliminary, and permanent injunctive relief as appropriate, against  
7 Defendants and their agents and employees and all persons acting under, in concert with, or for them  
8 to compel them to comply with all provisions of the 1994 Agreement;
  - 9 2. For a writ of mandamus compelling Defendants to meet their mandatory duty to enforce  
10 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq. and Title 24.
  - 11 3. For appointment of a monitor, selected by the Plaintiff, to oversee Defendants'  
12 implementation of the Court's orders;
  - 13 4. For an award of costs of incurred by Plaintiff in the investigation that preceded this action  
14 and in the and prosecution of this action, including expert fees, reasonable attorney's fees, and other  
15 costs; and
  - 16 5. For other equitable and legal relief as the Court deems appropriate.
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Dated: \_\_\_\_\_, 2003

BILL LOCKYER, Attorney General  
of the State of California  
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Deputy Attorney General  
Attorneys for Plaintiff People of the State of  
California ex rel. Bill Lockyer, Attorney General  
of the State of California

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**VERIFICATION**

I, Kathleen W. Mikkelson, declare:

I am a resident of the State of California and one of the attorneys who directed the investigation relating to Marin County for the matters set forth in the accompanying Petition for Writ of Mandate and Complaint for Breach of Contract (“petition”). I have reviewed the factual allegations of the petition. Based on the information provided to me, I believe the allegations therein to be true, and on that basis verify that they are true.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2003, at Oakland, California.

\_\_\_\_\_  
KATHLEEN W. MIKKELSON